

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES F. WESTMORELAND and DEPARTMENT OF THE NAVY,
NAVAL AVIATION DEPOT, Norfolk, VA

*Docket No. 03-1613; Submitted on the Record;
Issued October 28, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a hearing loss arising from his federal employment.

The case is on appeal to the Board for the third time.¹ In the first appeal, the Board found that the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further consideration of the merits of his claim, and affirmed the Office's July 15, 1999 decision. Specifically, the Board found that the evidence appellant submitted, consisting of the September 22, 1997 medical report of Dr. George H. Williams, a Board-certified otolaryngologist, documents from the employing establishment at Cherry Point, North Carolina describing changes to hearing protection use requirements and the results of a noise dosimetry, were either repetitive or not relevant to appellant's claim. The Board therefore found that the additional evidence appellant submitted did not constitute relevant and pertinent new evidence not previously considered by the Office.

By letter dated March 12, 2002, appellant requested reconsideration of the Office's decision and submitted evidence which was contained in the record including Dr. Williams' September 22, 1997 report and the dosimetry results dated December 1, 1998. In his September 22, 1997 report, Dr. Williams opined that appellant had a sensorineural hearing loss with a typical pattern of acoustic trauma in his left ear and that his right ear had a profound sensorineural hearing loss. He stated that the acoustic trauma or noise insult damaged appellant's left ear, and that the damaged inner ear was then susceptible for the Meniere's

¹ Docket No. 00-377 (issued December 6, 2000). On November 7, 1995 appellant, then a 60-year-old quality assurance specialist, filed a claim alleging that he sustained a hearing loss in his right ear due to exposure to hazardous noise at work. Further, the facts and history surrounding the first appeal are set forth in the initial decision and are hereby incorporated by reference. Appellant also appealed to the Board on September 20, 2002 but subsequently requested that the appeal be withdrawn so he could pursue a request for reconsideration before the Office. By order dismissing appeal dated December 27, 2002, the Board dismissed appellant's appeal.

disease which he later developed. Dr. Williams stated that Meniere's secondary to acoustic trauma was difficult to treat and could progress to profound sensorineural hearing loss.

In a report dated December 6, 1996, a referral physician, Dr. Mark Frey, a Board-certified otolaryngologist, stated that appellant was diagnosed with Meniere's disease in the left ear in 1985 and had three shunt operations. He stated that Meniere's disease most likely caused appellant's severe hearing loss in his left ear because of the flat nature on the audiogram which was not consistent with noise exposure and the sound level at his employment which did not appear to be "intense enough." In his report dated January 23, 1997, the district medical adviser agreed with Dr. Frey.

Due to the conflict in the evidence between Dr. Williams and Dr. Frey regarding whether appellant's hearing loss was work related, the Office referred appellant to the impartial medical specialist, Dr. Charles B. Beasley, a Board-certified otolaryngologist. In his report dated April 14, 1998, Dr. Beasley opined that appellant's hearing loss was not related to appellant's federal employment because appellant had a severe hearing loss in his right ear prior to his employment in 1976 and Meniere's disease "most likely" caused the progressive hearing loss in the left ear because the noise levels and ear protection appellant wore were not likely to result in a hearing loss.

In his request for reconsideration, appellant also submitted a medical report dated November 16, 2001 from Dr. Aristides Sismanis, a Board-certified otolaryngologist. In his report, Dr. Sismanis opined that appellant's sensorineural hearing loss was secondary to noise exposure and that the damaged inner ear was then susceptible for the Meniere's disease which he later developed. He opined that, based on his clinical experience, Meniere's secondary to acoustic trauma was difficult to treat and could progress to profound sensorineural hearing loss.

By decision dated March 27, 2002, the Office denied appellant's request for reconsideration on the grounds that it was untimely, and failed to show clear evidence of error.

Appellant filed an appeal of his case with the Board, but he later requested that the appeal be withdrawn. The Board dismissed appellant's appeal in an order dismissing appeal dated December 27, 2002, and on February 26, 2003 he requested reconsideration of the Office's decision through his congresswoman. In support of his request, appellant submitted four publications entitled, "Acoustic Trauma-Induced Meniere's Syndrome," "Post-Traumatic Hydrops," "Symposium on Meniere's Disease" and "Progression of Hearing Loss Caused by Occupational Noise." He also submitted a letter dated May 31, 2002 from Dr. Howard P. House, a Board-certified otolaryngologist, describing the professional background of Dr. Aram Glorig, a Board-certified otolaryngologist, and how he eventually joined his clinic. Appellant resubmitted a copy of Dr. Williams' September 22, 1997 report. He also submitted a report from Dr. Sismanis dated April 10, 2002. In his report, Dr. Sismanis opined that appellant's sensorineural hearing loss was due to noise exposure caused by working around aircraft and engines without effective noise protection and the damaged ear was then susceptible for the Meniere's disease, which he later developed. Dr. Sismanis opined that, in his clinical experience, Meniere's disease was secondary to acoustic trauma, was difficult to treat and could progress to profound sensorineural hearing loss.

In a May 19, 2003 decision, the Office considered the merits of appellant's claim and determined that the medical evidence did not show that he sustained an employment-related hearing loss.²

The Board finds that appellant has not established that his hearing loss was caused by his federal employment.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the appellant.³

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁴

In this case, the publications about Meniere's disease, post-traumatic hydrops and hearing loss progress appellant submitted do not establish the requisite causal connection between his hearing loss and his federal employment. The Board has held that publications or textual documents have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles to the specific factual situation at issue in the case.⁵ No physician in the record showed the applicability of these publications to appellant's condition. Dr. House's May 31, 2002 description of Dr. Glorig's background is not relevant to appellant's claim.

The conflict between Dr. Williams' September 22, 1967 report and Dr. Frey's December 6, 1996 report regarding whether appellant's hearing loss was work related was

² It should be noted that the Office apparently decided to reopen the case for merit review on its own motion. See 5 U.S.C. § 8128(a).

³ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁵ See *Gloria J. McPherson*, 51 ECAB 441, 448 (2000); *Ruby I. Fish*, 46 ECAB 276, 282 (1994).

resolved by the impartial medical specialist, Dr. Beasley. In his April 14, 1998 report, Dr. Beasley opined that it was most likely that Meniere's disease was responsible for the progressive hearing loss in the left ear particularly since appellant's noise exposure levels and his ear protection were not likely to result in hearing loss. Dr. Beasley's opinion is well rationalized, and as the impartial medical specialist, his opinion is entitled to special weight.⁶

Dr. Sismanis' November 16, 2001 and April 10, 2002 reports in which Dr. Sismanis opined that appellant's sensorineural hearing loss was due to noise exposure at work, and that appellant's damaged inner ear was then susceptible for Meniere's disease which appellant later developed are not well rationalized as they do not specifically explain how Meniere's disease developed from appellant's noise exposure. Further, Dr. Sismanis' statement that in his clinical experience Meniere's disease was secondary to acoustic trauma, was difficult to treat and could progress to profound sensorineural hearing loss is general and does not relate specifically to appellant's situation. Dr. Sismanis' reports are therefore of diminished probative value.⁷ Appellant has failed to submit a medical report containing a well-rationalized medical opinion explaining how his hearing loss was caused by his federal employment, and has failed to establish his claim.

The May 19, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 28, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

⁷ See *Solomon Polen*, 51 ECAB 341, 343-44 (2000).